

Utility Models

The Need for Protection in Qatar

Dr. Mohamed Salem Abou El Farag (*)

*) College of Law, Qatar University.

مُلَخَّصُ البَحْثِ

نماذج المنفعة

ضرورة توفير حماية لها في قطر

بهدف تشجيع الابتكار وخلق اقتصاد قائم على المعرفة، تدرس السلطة التشريعية القطرية إدخال آلية تحمي بمقتضاها نماذج المنفعة. ويمكن حماية الاختراعات بموجب قانون البراءات، ولكن يجب استيفاء متطلبات هذا القانون، أي الجدة، والخطوة الإبداعية والتطبيق الصناعي. ويمكن اعتبار الابتكار تحسینًا واضحًا على الفن الصناعي القائم، ولكن لا يمكن أن يكون موضوعًا لطلب براءة حيث إنه يفقر إلى شرط الخطوة الإبداعية. والهدف من هذه الورقة هو تزويد المشرع القطري بنظام لحماية نماذج المنفعة والذي يمكن تبنيه في الدولة.

الكلمات الافتتاحية:

الملكية الفكرية، حماية نماذج المنفعة، حماية براءات الاختراع، قطر، الابتكارات، التنمية الاقتصادية، منظمة التجارة العالمية.

Abstract

With the aim to encourage innovation and create a knowledge-based economy, the Qatari legislative is considering introducing a mechanism in line with which utility models shall be protected. Inventions can be protected by patents law but the requirements of this law must be satisfied, namely novelty, inventive step (non-obviousness) and industrial applicability. An innovation can be regarded as an obvious improvement over the existing art but it cannot be a subject for a patent application since it lacks the requirement of an inventive step. The aim of this paper is to provide the Qatari legislative with a utility models system that can be adopted in Qatar.

Keywords:

Intellectual Property, Utility Models Protection, Patent Protection, Qatar, Innovations, Development, World Trade Organization.

1. INTRODUCTION

As one of the most competitive economy in the region, Qatar seeks to be a knowledge-based economy. Innovation plays a fundamental role in achieving that goal. Providing a legal framework for the protection of innovations and inventions is crucial in this regard.

Qatar has already introduced a number of laws that deal with the protection of intellectual property, such as copyright law no. 7 of 2002; trade marks and industrial designs and models law no. 9 of 2002;¹ trade secrets law no 5 of 2005;² and patents law no 30 of 2006.³

On the other hand, there is no system for the protection of utility models has been adopted until now. Utility models are regarded as important tools for small and medium

¹ For more details on this law, see Mohamed Salem Abou El Farag 'Trade Marks Protection in Qatar: A Study of the Basic Concepts in the Law No. 9 of 2002' (2010) 4(2) *The Legal and Judicial Journal*, Centre for Legal and Judicial Studies, Ministry of Justice, Qatar 105-124. It should be noted that the law of Trade Marks, Trade Data, Trade Names, Geographical Indications and Industrial Designs and Models was published in the Official Gazette, issue no: 8- date of publication: 26-8-2002- p. 120.

² For more details, see Mohamed Salem Abou El Farag, 'The Protection of Trade Secrets in Qatar', a chapter in *'Intellectual Property Rights: Development and Enforcement in the Arab States of the Gulf'* edited by Prof. David Price and Alhanoof AlDebasi (Berlin & London: Gerlach Press, 2017). It should be noted that the law on the protection of Trade Secrets (Law no. 5) in Qatar was published in the Official Gazette, issue no: 5- date of publication: 24-5-2005- p. 79.

³ On this law, see Mohamed Salem Abou El Farag, 'Patents Protection in the State of Qatar: A Critical Analysis of the Law No. 30/2006.' (2011) 5 (2) *The Legal and Judicial Journal*, Centre for Legal and Judicial Studies, Ministry of Justice, Qatar. It should be noted that the Patents Law of Qatar was published in the Official Gazette, issue no: 11- date of publication: 12-12-2006- p. 515.

enterprises (SMEs)⁴ that do not make great or substantial improvement or amendments to existing products. As it was rightly stated, utility models “are primarily used for mechanical innovations.”⁵

Due to its importance, the government of Qatar is considering introducing a system for the protection of utility models. The aim of this paper is to provide the Qatari legislative with a utility models system that can be adopted. The paper shall highlight the solutions adopted in other jurisdictions with a view of benefiting from them.⁶

⁴ Generally speaking, SMEs are “non-subsidary, independent firms which employ fewer than a given number of employees. This number varies across countries. The most frequent upper limit designating an SME is 250 employees, as in the European Union. However, some countries set the limit at 200 employees, while the United States considers SMEs to include firms with fewer than 500 employees. For more details, see the Organisation for Economics and Co-Operation and Development (OECD), *OECD SME and Entrepreneurship Outlook* (Paris: OECD, 2005) p.17. Available at:

<https://stats.oecd.org/glossary/detail.asp?ID=3123> (last visited October 27, 2018).

As for Qatar, SMEs refer to “the companies registered in accordance with the law of the State of Qatar, at which number of employees does not exceed two hundred and fifty (250) employees... and at which annual turnover does not exceed one hundred (100) million Qatari Riyals.” For more details, see Qatar Development Bank (QDB), *The State of Small and Medium Enterprises (SMEs) in Qatar* (Qatar: QDB, 2016) p. 19. Available at:

https://wlabdemo.com/qdb_sliced3/The%20State%20of%20SMEs%20in%20Qatar-2016_EN-Web%20-%20P.pdf (last visited October 27, 2018).

⁵ Judy Winegar Goans, G. Lee Skillington, David Weinstein and Patricia Drost, *Intellectual Property: Principles and Practice* edited by Jaleen Moroney (Cairo: Publisher unknown, 2003), pp. 78-9.

⁶ Based on the fact that most of the Qatari legislations are based on the Egyptian Laws, the paper shall refer to the system adopted in Egypt for the protection of utility models. The provisions concerning utility models in the Law on Intellectual Property Rights no. 82 of 2002 are to be found specifically in Articles 29-31. However, there are a number of common rules laid down for both patents and

The paper shall attempt to define the “utility models”. After that, it shall provide an overview about patent protection in Qatar. It shall then deal with the issue of patents or utility models. Next, it shall present the term of protection in different countries, then a conclusion presenting the outcomes of the research.

2. PROTECTABLE SUBJECT MATTER

A utility model⁷ is granted for “each new technical addition in the building or formation of means, tools, kits or their parts or products, preparation or production methods of the aforesaid and all items that are in current use.”⁸

As can be seen, novelty is a requirement for obtaining utility models protection. In this regard, this regime is similar to that of patents. However, the condition of an inventive step is not required in the former unlike the latter.

Attaching a pencil and pad of paper to a case of a telephone (note that the telephone itself was the subject of a patent application) is an example of an innovation that would be subject matter for a utility model application.⁹ The innovation here is

utility models in other provisions of the said law. It should be noted that such an alternative proprietary regime is granted for the first time in Egypt.

⁷ On utility models, see generally Dan Prud'homme, *Creating a 'Model' Utility Model Patent System: A Comparative Analysis of the Utility Model Patent Systems in Europe and China*, (China, Beijing, IP Key Project Working Papers Series, 2014); Uma Suthersanen, *Utility Models and Innovation in Developing Countries*, (Geneva, ICTSD, 2006); Uma Suthersanen, 'A Brief Tour of "Utility Model" Law' (1998) 20 (2) EIPR 44.

⁸ Art. 29 (1) of the IPRs law of Egypt.

⁹ It should be noted that “the shape of the telephone, the layout of buttons or the placement of the screen on which the numbers are displayed, would be the subject of an industrial design registration, because they relate to the appearance of the item...a phone that has a black case performs the same function as one

considered to be “an obvious improvement over the existing art.”¹⁰ But it cannot be a subject for a patent application since it lacks the requirement of an inventive step.¹¹

3. PATENT PROTECTION IN QATAR:¹²

In order for a patent to be granted, an invention must meet the patentability criteria, namely, novelty, an inventive step (non-obviousness) and industrial applicability. Also, there are a number of other requirements that must be respected in order for a patent to be granted. After that, we shall discuss the rights to be enjoyed by the inventor after the granting of the patent.

3.1. Patentability Criteria

3.1.1. Novelty

The law does not employ any standard of novelty. Patent laws around the world either adopt the “absolute novelty” standard or the “relative novelty” standard.

The absolute standard of novelty means that the claim of new technical information must not be part of the “known knowledge” or the “state of the art.”¹³ The

with a clear case, but each gives a different appearance.” See Goans *et al.*, *op. cit.*, pp. 78-9.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² This part is mainly based on Mohamed Salem Abou El Farag, ‘Patents Protection in the State of Qatar’, *op. cit.*, p. 7 *et seq.*

¹³ See s.2 (1) of the PA 1977 and Art.54 (1) of the EPC. The US Law (35 US Code section 102) adopts what is commonly known as “grace period” (one year). If the invention has become publicly available in the 12 months before the patent application was filed, the application may still be accepted. Qatar and Egypt do not provide for such a period. In the first draft of the new intellectual property rights law of Egypt (Law No. 82/ 2002, Official Journal -ALWAKAA –AL MASREA, issue No. 22 *bis*, June 2, 2002) [hereinafter IPRs law], the grace period was mentioned (but only 6 months) but it was later eliminated for one simple reason.

state of the art is judged by examining all previous information or "prior art." "Prior art being constituted by everything [whether a product, a process, information about either, or anything else] disclosed to the public anywhere by means of written or oral disclosure, by use [particularly use by local and indigenous communities], or by any other way by which the invention is realised before the relevant filing date of the patent application or priority date validity claimed in respect thereof."¹⁴

It is evident that prior art, under this definition, includes all written or oral information that has been in the public domain whether in Qatar (for example) or abroad. This is not the case in some countries, such as the U.S., where novelty is destroyed by written and oral divulgence of the invention only in that country. Moreover, non-written means such as public use or sale is not to cause the invention to lose its novelty so long as it has occurred outside the U.S.¹⁵ Hence, only *publications* made outside the U.S. destroy novelty under its law.¹⁶ Such a situation has permitted bio-piracy¹⁷ around the world.¹⁸

The drafters of the law indicated that such a grace period was not stated in international conventions or treaties. For more details concerning the Egyptian Law, see Samiha El Qalyoubi, *Industrial Property* (Cairo: Dar Al Nahda Al Arabia, 2016 (in Arabic)) p. 117.

¹⁴ Art.2(2) of the Patent Regulation of the Cooperation Council for the Arab States of the Gulf.

¹⁵ Carlos M. Correa, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPs Agreement and Policy Options* (London: Zed Books Ltd, 2000) p. 57. [hereinafter Correa: *IPRs, the WTO and Developing Countries*].

¹⁶ Gillian N. Rattray, 'The Enola Bean Patent Controversy: Bio-piracy, Novelty and Fish-and Chips' (2002) 8 *Duke Law & Technology Review* 6 (referring to the U.S. law (35 U.S.C. s.102 (a). The author also states that the mere use of the famous Enola bean in Mexico "without printed publication [was] insufficient to show a lack of novelty").

¹⁷ Defined as "the unauthorised and uncompensated expropriation of traditional knowledge and natural resources," see Michael Woods, 'Food For Thought: The Bio-Piracy of Jasmine and Basmati Rice' (2002) 13 *Albany Law Journal of Science*

It should be noted that, in order to destroy novelty, it is necessary that the description of the invention, whether in writing or through oral means be as such to enable those who are skilled in the art to exploit such an invention.¹⁹

3.1.2. An Inventive step

The invention must involve a significant addition to the state of the art to be patentable.²⁰ Therefore, an inventive step is required. “An invention is deemed to involve an inventive step if, having regard to the relevant prior art, it would not have been obvious to a person having ordinary skills in the Art.”²¹ In this regard, it is suggested that the “skilled but unimaginative worker” test to be considered.²²

3.1.3. Industrial applicability

& Technology 123, p. 134 (also indicating that the general cause of bio-piracy seems to stem from “the lack of enforceable international laws that would provide for the protection of the indigenous knowledge and natural resources of [developing and least-] developed countries”).

¹⁸ Richard Gerster, *Patents and Development: Lessons Learnt from the Economic History of Switzerland* (Penang, Malaysia: Third World Network, 2001) p. 17.

¹⁹ For example see Art.3 (2) of the IPRs Law of Egypt. Neither the Qatari Patent Law nor the Patent Regulation of the GCC mentions such a requirement.

²⁰ Michael Blakeney, *Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement* (London: Sweet & Maxwell, 1996) p. 84.

²¹ Art.2(3) of the Patent Regulation of the GCC. Similar definition is contained in s.3 of PA and Art. 56 of EPC.

²² To put it differently, ‘a person who is skilled in the art’ refers to ‘the ordinary level of skill of a person who is familiar with the relevant area of technology’, Judy Winegar Goans, G. Lee Skillington, David Weinstein and Patricia Drost, *Intellectual Property: Principles and Practice* edited by Jaleen Moroney (Cairo: Publisher unknown, 2003) p. 39.

It means that an invention is to be manufactured or made (if a product) or used (if a process) in any kind of industry, including agriculture, fishing, or services.²³ In other words, it must be capable of being carried out in practice,²⁴ and not being purely theoretical.²⁵ For this reason, methods of treatment for people or animals, mathematical methods, scientific theories, and the like, are excluded under the Qatari law.²⁶

3.2. Conditions on Patent Application

3.2.1. Respecting the Provisions of Islamic Shaaria' Law and Public Order

In order to be protected by a patent, an invention must not be contradicting with the provisions of the Islamic Sharia' Law, or violating the public order, public morality or national security.²⁷

The Patent Law does not define what is meant by public order.²⁸ In many ways, this would be advantageous to Qatar since, if adopted, the competent authorities would be free to determine the appropriate notion of public order. In doing so, it should be noted that the concept of public order is not limited to security reasons because it might be used

²³ Industry should be interpreted in the broadest sense so as to include handicraft, see Art.2 (4) of the Patent Regulation of the GCC. See also PA s. 4(1) and EPC Art.57.

²⁴ Blakeney, *op. cit.*, p. 85.

²⁵ World Intellectual Property Organisation (WIPO), *WIPO Intellectual Property Handbook: Policy, Law and Use* (Geneva: WIPO Publication No. 489(E), 2001) p. 18.

²⁶ Art. 4(2) of the Patents Law of Qatar.

²⁷ A similar provision is contained in Art. 2(1) and Art. 4 of the Patent Regulation of the GCC.

²⁸ Public order or *ordre public* "is a French legal concept that refers to the compelling issues of public policy necessary for a well-ordered society", see Goans *et al.*: *IP: Principles & Practice*, *op. cit.*, p. 37-8.

to “protect human, animal or plant life or health or to avoid serious prejudice to the environment.”²⁹ Therefore, any inventions that may adversely affect the public order (or public morality) in its broadest meaning shall not be protected by the patent regime in Qatar. There are many examples of inventions that should come under such a category, such as an invention concerning means of forging money or official documents and inventions related to gambling machines.

3.2.2. Principles of National Treatment and Most-Favoured Nation

In accordance with its obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (known as the “TRIPs Agreement”³⁰ of the World Trade Organization)³¹ and the Paris Convention for the Protection of Industrial Property

²⁹ Art.27 (2) of TRIPs and Art. 4 of the Patent Regulation of the GCC.

³⁰ The TRIPs Agreement is the cornerstone of the current system of international intellectual property protection. Among other things, the Agreement establishes minimum standards of protection for the most important forms of intellectual property, namely copyright and related rights (including those for computer programs, databases, sound recordings, and audiovisual works); trade marks and service marks; geographical indications; industrial designs; patents; layout designs of integrated circuits; and undisclosed information. Plant varieties must also be protected either by patents or by an effective *sui generis* system or by any combination thereof. For more details on this Agreement, see Mohamed Salem Abou El Farag, *Intellectual Property Law: Basic Concepts*, 2nd edition (Cairo: Dar Al Nahda Al Arabia, 2009) pp. 24-40.

³¹ WTO Agreement was adopted as part of the Final Act of the Uruguay Round which entered into force on January 1, 1995. For a comprehensive account of the negotiating history of the Uruguay Round, see Terence P. Stewart (ed.), *The GATT Uruguay Round: A Negotiating History (1986-1992) Volumes I-III* (Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1993). It should be noted that Qatar has been a Member of the World Trade Organisation (WTO) since January

(1883),³² Qatar provides for the principle of national treatment.³³ Art. 5 of the Patent Law of Qatar stipulates that “without prejudice to the international conventions applicable in the State, any person, natural or judicial, Qatari or non Qatari, who belongs to, or assumes a real and effective activity centre in any WTO member state or member entity that enjoys reciprocity with Qatar, shall be eligible to apply to the Office for a patent and any other rights pertaining to it in line with the law hereby.”

Based on this, any Qatari – whether a natural person or juristic person- can submit a patent application. The right to submit a patent application is also granted any foreigner – whether a natural person or juristic person - who belongs to, or adopts an actual and effectual centre of activity for himself or itself in a member or entity of the WTO or that applies reciprocity with Qatar, even if this country is not a member of the WTO.

3.2.3. Patent Applications

A patent application must be submitted by the inventor, his/her authorised agent or assignee to the Qatari Patent Office.³⁴ The terms and conditions prescribed by the executive regulations must be taken into consideration in this regard.³⁵ An application

13, 1996. For more details, see https://www.wto.org/english/thewto_e/countries_e/qatar_e.htm [last visited October 27, 2018].

³² Qatar has been a party to the Paris Convention since July 5, 2000, see http://www.wipo.int/treaties/en/ShowResults.jsp?search_what=C&country_id=145C [last visited October 27, 2018].

³³ Art.3 (1) of TRIPs and Articles 2 and 3 of the Paris Convention.

³⁴ Art. 6(1) of the Qatari Patent Law and Art. 5(1)(1) of the Patent Regulation of the GCC.

³⁵ Art.6 (1) of the Patent Law. It should be noted that the executive regulations of the Patent Law was issued in July 2018. See the Official Journal; Issue No. 11, p. 144 *et seq.* A copy of the executive regulations can be obtained from the following website:

may relate only to one invention.³⁶ The applicant may withdraw his/her application at any time before the issuance of the final decision.³⁷ Nevertheless, the withdrawal of the application shall not entail the right to reclaim its documents, or the right to refund of fees or expenses incurred.³⁸

Art. 6(3) of the law lays down that the application may include the desire to give the priority to an application that has been previously submitted in a country which is one of the parties to an agreement or convention concluded with the State of Qatar.³⁹

The Patent Office shall examine submitted applications.⁴⁰ The Office shall be entitled to request all necessary documents for granting patents.⁴¹ The applicant is entitled to appeal against the Office's refusal decision within fifteen days of being notified by a

<http://www.almeezan.qa/LawPage.aspx?id=7647&language=ar> [last visited October 27, 2018].

³⁶ "Or to aspects that are so related as to constitute a single general inventive concept", see Art. 5(1)(3) of the Patent Regulation of the GCC.

³⁷ Art.6 (2) of the Patent Law and Art. 8 of the Patent Regulation of the GCC. The later Article contains more details concerning specification, claims and amendments to his application.

³⁸ Art.6 (2) of the Patent Law; Art. 6 (1) of the executive regulations; and Art. 8 of the Patent Regulation of the GCC.

³⁹ The same Article goes further and determines that the executive regulations shall decide the details and conditions that govern the application. Art. 3 of the executive regulations contains the necessary details in this regard. See also Art.7 of the Patent Regulation of the GCC. The duration of the priority is twelve months.

⁴⁰ Art.7 of the Patent Law and Art. 8 of the executive regulations. For the formal and substantive examination procedures, see Articles 9-11 of the Patent Regulation of the GCC.

⁴¹ Art.7 of the Patent Law.

registered letter before a committee whose membership and competence are determined by a Ministerial decision.⁴²

If the patent has been accepted, the Patent Office shall register and publish it in the manner identified by the executive regulations of the law.⁴³ The patent certificate shall be granted to the person who is authorised to be the right holder. The certificate must bear registration number and issue date in addition to other details as specified by the executive regulations of the law.⁴⁴

Where there is more than one application submitted for patenting the same invention, priority is given to the application date.⁴⁵ In the event of more than one person is involved in the same invention, they shall have equal right for patent unless otherwise agreed.⁴⁶ A person shall not be deemed as an inventor if his/her activities are limited to executing the ideas.⁴⁷

3.3. Rights Conferred to the Patentee

In accordance with the Patent Law of Qatar, a patent shall allow its owner the right to exploit the protected invention through making, using, offering for sale, selling,

⁴² *Ibid.*, Art.7. It should be noted that a decision from the Ministry of Economy and Commerce concerning the formation of this committee was issued in July 2018. See the Official Journal, Issue 11, p. 153. A copy of this decision can be obtained from the following website:

http://www.almeezan.qa/PrintArticle_section.aspx?LawTreeSectionID=18087&language=ar&lawId=7648 [last visited October 27, 2018].

⁴³ *Ibid.*, Art.8(1). See also Art. 10 (3) of the executive regulations.

⁴⁴ *Ibid.*, Art.9(1). See Art. Art. 11 of the executive regulations.

⁴⁵ *Ibid.*, Art.3(1). See also Art. 2(6) of the Patent Regulation of the GCC.

⁴⁶ Art.3(2) of the Patent Law. See also Art. 2(7)(1) of the Patent Regulation of the GCC.

⁴⁷ Art.3(2) of the Patent Law. See also Art. 2(7)(1) of the Patent Regulation of the GCC.

or importing the necessities of legitimate exploitation.⁴⁸ No one can exploit the patented invention without written permission by its owner.⁴⁹ It should be noted that Art. 28 of the TRIPs Agreement details the rights conferred by a patent. These rights differ depending on whether the patent claims a product or a process.

3.3.1. Product Patents

Patents relating to a product confer on its owner exclusive rights to prevent third parties not having his consent from “making, using, offering for sale, selling, or importing for those purposes that product.”⁵⁰

It should be noted that one of the “primary original objectives” of the pharmaceutical industry for the TRIPs negotiations was to provide product patents to pharmaceutical products.⁵¹ This is due to the fact that a product patent “grants protection regardless of the method used to produce the compound or the intended use of the compound.”⁵²

3.3.2. Process Patents

With reference to a process patent, unauthorised third parties are prevented from “using the process, and from using, offering for sale, selling, or importing for these

⁴⁸ Art.9 (2) of the Patent Law.

⁴⁹ *Ibid.*, Art.9 (2).

⁵⁰ Similar rights granted under Art.12(1) of the Patent Regulation of the GCC. Also, Art.12(2) states “where the patent subject is a product, the Patent owner shall have the right to prevent others from manufacturing, use, sale, offering for sale, or import of the product for such purposes, without his prior consent.”

⁵¹ Jacques J. Gorlin, *An Analysis of the Pharmaceutical-Related Provisions of the WTO TRIPs (Intellectual Property) Agreement* (London: Intellectual Property Institute, 1999) p. 21.

⁵² Theresa Beeby Lewis, *op. cit.*, p. 842 [references omitted].

purposes at least the product obtained directly by that process.”⁵³ It is worth noting that when the final product is not patentable, such as plants and animals, the extended protection from process to product must not apply. If this would not be adopted, the prohibition on granting patents in the said fields will be nullified.⁵⁴

4. UTILITY MODELS OR PATENTS

As for the condition that requires that the invention must involve an inventive step, it means that the invention should not be obvious to a person skilled in the art, having regard to any matter forming part of the state of the art.⁵⁵ In this regard, it is suggested that the “skilled but unimaginative worker” test to be considered.⁵⁶ In other words, patents require that an invention to make a “substantial contribution to the art.” In Australia, the judgment of the Full Court of the Federal Court in *Dura-Post (Aust) Pty Ltd v Delnorth Pty Ltd* (**Delnorth** case July 2009) considered the degree of inventivity required for patents.

⁵³ Art.28 (1) (b) of TRIPs. Art.12(1) of the Patent Regulation of the GCC provides that “As for industrial processes or manufacturing methods of a certain product, the patent owner shall have the same right to direct products of the said process or method, in addition to his right to use the process or method thereof.” Art.12(2) sets forth that “but where the patent subject is an industrial process, he shall have the right to prevent others from actual use of the process. He shall also have the right to prevent others from use, and offering for sale, sale or import of at least the products directly obtained by using such process, for such purposes, without his prior consent.”

⁵⁴ Correa: *Patent Rights, op. cit.*, p. 205.

⁵⁵ See Section 3 of the Patent Act of the UK of 1977; and Article 56 of the European Patent Convention of 1973, as amended.

⁵⁶ To put it differently, ‘a person who is skilled in the art’ refers to ‘the ordinary level of skill of a person who is familiar with the relevant area of technology’, Goans *et al.*, *op. cit.*, p. 39.

“It held that in considering what degree of inventivity (innovative step) was required for an innovation patent found that when assessing innovative step, the Court must compare the invention as claimed with each prior disclosure and identify whether any variations between the claimed invention and the prior disclosure make a substantial contribution to the working of the invention. If it did, the innovation was protectable. The Full Court also accepted the trial judge’s view that “substantial” in this context means “real”, or “of substance.””⁵⁷

In addition to this, obtaining utility models involves less costs than following the patent way.⁵⁸

As for obtaining utility models protection, applicants are entitled –in some countries- to convert their applications to applications for a patent.⁵⁹ By the same token, patent applicants have the right to change their applications to those for obtaining utility model protection.⁶⁰ Also, the laws of some countries give the authority to Patent Offices to *ex officio* convert utility model applications to patent applications, if the necessary conditions are satisfied.⁶¹

In Egypt, recording the applications shall - in all cases - revert back to the date of submitting the original application.⁶² It is worth mentioning that the applicants for utility model protection are requested to pay a fee on the submission of their applications in addition to an annual fee as prescribed by the law and its executive regulation.⁶³

⁵⁷ John Richards, ‘Utility Model Protection Throughout the World.’ Available at: https://www.ipo.org/wp-content/uploads/2013/03/Utility_Model_protection.pdf [last visited October 27, 2018] p. 1, ft.2.

⁵⁸ *Ibid.*

⁵⁹ See for example Art. 29 (2) of the IPRs law of Egypt.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, Art. 29 (4).

⁶² *Ibid.*, Art. 29 (3).

⁶³ *Ibid.*, Art. 31.

5. DURATION OF PROTECTION OF UTILITY MODELS

The protection term for the utility model is seven years starting from the date on which the application is submitted to the competent office.⁶⁴ Thus, unlike patents that are protected for twenty years, utility models are only protected for a period of seven years. It must be noted that the term of protection of utility models is not renewable,⁶⁵ this is the same as with the patents regime.

6. CONCLUSION

The understandable objective to implement utility models system into any law is to “encourage domestic innovation.”⁶⁶ Also, the adoption of utility models regime is

⁶⁴ *Ibid.*, Art. 30 of the IPRs Law of Egypt. This term of protection is the same as in Greece. In other countries such as Argentina, Austria, Brazil, China Denmark, utility models are protected for a term of 10 years. For more details, see John Richard, *op.cit.*,p. 5.

⁶⁵ *Ibid.*

⁶⁶ Ruth L. Gana, ‘Prospects for Developing Countries under the TRIPs Agreement’ (1996) 29 *Vanderbilt Journal of Transnational Law* 735, at 757 (referring to China where utility models have been used successfully. The author, on the other hand, indicates that “no country has made significant progress in technological advancement through a regime of utility models”). See also Christopher Arup, *The New World Trade Organisation Agreements: Globalising Law Through Services and Intellectual Property* (Cambridge: Cambridge University Press, 2000) at 193 (pointing out that utility models may be seen as suitable for small and local inventors because of their less demanding requirements).

strongly advised by experts “because of their proven efficacy in stimulating local adaptation and improvement of foreign inventions.”⁶⁷

Due to its significant importance, the E.U. Commission recently presented a proposal to adopt the regime⁶⁸ of utility models.⁶⁹ It is hoped for such a system to be adopted in the near future in order to advance innovations and development.⁷⁰

⁶⁷ J. H. Reichman, *Implications of the Draft TRIPs Agreement for Developing Countries as Competitors in an Integrated Market*, UNCTAD Discussion Paper No. 73, UNCTAD/OSG/DP/73 (1993), p. 39.

⁶⁸ Utility models can be granted at the national level in the following countries: Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Poland, Portugal, Slovakia and Spain. See The European IPR Helpdesk, ‘Your Guide to IP in Europe.’ Available at: <https://www.iprhelpdesk.eu/sites/default/files/documents/EU-IPR-Guide-IP-in-Europe.pdf> [last visited September 20, 2018], p. 25.

⁶⁹ See Proposal for a European Parliament and Council Directive approximating the legal arrangements for the protection of inventions by utility model (1998) OJ C36. See also the Amended Proposal for a European Parliament and Council Directive approximating the legal arrangements for the protection of inventions by utility model (2000) OJ C248/56, COM (99) 309 final. For the most recent updates on this topic in the E.U., see the document entitled “Utility Models” that is available on the following website: https://ec.europa.eu/growth/industry/intellectual-property/patents/utility-models_en [last visited October 27, 2018].

⁷⁰ Paul Torremans, *Holyoak and Torremans Intellectual Property Law*, 4th Edition (Oxford: Oxford University Press, 2005), at 160 (the author clearly indicates that such a system, which is available almost everywhere in Europe, is needed in the UK).

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